

1                   THE COURT: The question was had you seen  
2 instances where Lawson will implement multiple vendor  
3 data for customers and that was objected to as being  
4 beyond the scope of the report. And then it was said  
5 that -- and I should look at appendix 3 of his report  
6 page 23, which I have in front of me. So how does  
7 that come into play here?

8                   MR. McDONALD: Your Honor, we're talking  
9 about this element and that question is related to --

10                  THE COURT: Which element?

11                  MR. McDONALD: This element regarding a  
12 database containing data relating to items, etc. That  
13 is in the left column here in appendix 3 at page 23.  
14 So that's the element we're talking right now about.

15                  As I understood the question was relating to  
16 Dr. Weaver's purported support for his conclusion that  
17 the Lawson systems satisfied this element because you  
18 can see with the language there under the middle  
19 column where he states the basis for his direct  
20 infringement opinion, which is what we're talking  
21 about right now, he doesn't say it that way.

22                  THE COURT: This goes on for, I don't know,  
23 something like 10 pages. Where in those 10 pages or  
24 20 or whatever it is -- good grief. It goes on to --  
25 where does it stop? It starts on 23 and I'm on 48 and

WEAVER - DIRECT

809

1 it's still going. Where does it stop?

2 MR. ROBERTSON: Well, Your Honor, with  
3 respect to -- I think you might be able to stop for  
4 the purchases of this discussion at page 45 because  
5 you may recall with respect to this M3 procurement  
6 system there's a stipulation.

7 THE COURT: M3?

8 MR. ROBERTSON: Yes, sir. It's on page 45.

9 THE COURT: Uh-huh.

10 MR. ROBERTSON: So just so for Your Honor's  
11 purposes, there's some organization here that relates  
12 to the systems that we've been describing. If I could  
13 just point to that first.

14 As you'll see here at page 23 in bold under  
15 the column Lawson's direct infringement. It says, Any  
16 system including the S3 procurement system. That's  
17 that core system we've been talking about.

18 THE COURT: Where are you reading now?

19 MR. ROBERTSON: On page 23 right next to the  
20 claim element there is in bold, Any system including  
21 the S3 procurement system.

22 THE COURT: Okay.

23 MR. ROBERTSON: Then it goes on identifying  
24 considerable evidence including customers who have  
25 multiple databases or databases with multiple vendor

1 items for a number of pages. And all the evidence  
2 that the doctor relied on there until you get to page  
3 38, which is talking about another configuration of  
4 the infringing system we've been discussing, which is  
5 that core system plus the EDI module. Further  
6 evidence goes on there.

7 THE COURT: But the question is -- the  
8 question is simple. Have you seen instances where  
9 Lawson will implement multiple vendor data for  
10 customers? Where does he say that? I have to say  
11 that --

12 MR. ROBERTSON: It says --

13 MR. McDONALD: Your Honor, the way I'm  
14 looking at this, this is the first paragraph on page  
15 23 summarizes his conclusions. Then he includes a  
16 bunch of sites for the next several pages. I'm  
17 focusing on that very first paragraph.

18 THE COURT: No, that's not right because you  
19 can read through what he says. The fact of the matter  
20 is the way I read page 24 and following, there are a  
21 number of instances where precisely this question is  
22 addressed. It's just addressed in a different format.  
23 It doesn't say does Lawson do it. It just says it is  
24 done by Lawson. By the Lawson system. So the  
25 objection is overruled.

1           You don't have an answer to the question. If  
2 you want the question answered, you have to get an  
3 answer to it. If you don't, move right along.

4 BY MR. ROBERTSON:

5 Q    Doctor, do you have an opinion as to whether or  
6 not Lawson provides which of these configurations as  
7 we've defined them satisfies the claim element of a  
8 database containing data relating to items associated  
9 with at least two vendors maintained so that selected  
10 portions of the database may be searched separately?

11           THE COURT: He can't answer that because it's  
12 two questions, neither one of which is related to the  
13 other one. You changed the approach to the  
14 questioning right in the middle of the sentence. And  
15 so start again and ask it again. Either way. It  
16 doesn't make any difference, but you have to ask it  
17 one way or the other. Then it will make sense.

18           MR. ROBERTSON: Let me try and rephrase, Your  
19 Honor. Thank you.

20 BY MR. ROBERTSON:

21 Q    Well, Doctor, do you have an opinion as to whether  
22 any of the five accused configurations as we've  
23 defined them satisfy the element of a database  
24 containing data relating to items associated with at  
25 least two vendors maintained so that selected portions

WEAVER - DIRECT

812

1 of the database may be searched separately?

2 A I believe that's true of all five.

3 Q How can the database, selected portions of the  
4 database, be searched separately?

5 A That's what is accomplished by the keyword search  
6 index.

7 Q Does this claim element require catalogs?

8 A It does not.

9 THE COURT: We're talking, ladies and  
10 gentlemen, about the first element of the only claim  
11 that is accused in the '172 patent. That's when he  
12 said this element, does it require a catalog. He's  
13 saying no, it doesn't require a catalog.

14 Is that right?

15 THE WITNESS: You're correct, Your Honor.

16 Q Why doesn't it require catalogs?

17 A Because it requires a database.

18 Q What does that database have to contain?

19 A It contains data relating to items associated with  
20 at least two vendors.

21 Q So that data doesn't have to be organized in the  
22 way that the Judge has defined "catalog" in the  
23 glossary of terms, first definition that's available  
24 at tab 6 of the Judge's claim constructions; is that  
25 right?

1 A That's correct because "catalog" does not appear  
2 in the first element of this Claim One of the '172  
3 patent.

4 Q Do you have an opinion as to whether or not the  
5 Lawson -- which Lawson accused systems -- let me start  
6 over. Do you have an opinion as to whether or not  
7 the five systems as we have defined them satisfy the  
8 claim element of means for entering product  
9 information that at least partially describes at least  
10 one desired item?

11 A Yes, all five.

12 Q Where do we see examples of that?

13 A In the product documentation and in my  
14 demonstrations.

15 Q How do you do that?

16 A You enter a keyword into a text box using the user  
17 interface that is provided by either the RQ, the  
18 requisitions module, or the requisition self service  
19 module.

20 Q Do you have an opinion as to whether all five  
21 systems, as we've defined them, satisfy the claim  
22 element of means for searching for matching items that  
23 match the entered product information in the selected  
24 portions of the database?

25 A Yes, all five do that. They all provide a search

1 engine and they all use the keyword search index.

2 MR. McDONALD: Your Honor, configuration  
3 No. 1 is not accused with this claim, so I think it's  
4 confusing to have them going element through element  
5 for all five of them. I think the ones that include  
6 the RSS should be --

7 THE COURT: Mr. Robertson, what saith thou?

8 MR. McDONALD: I'm actually confused by --

9 THE COURT: Let me let you-all do this. I  
10 thought we'd be through with Dr. Weaver by now and  
11 we'd take our morning break, but you have been here  
12 for four hours working at it now. I think it's a good  
13 time to stretch your legs and get this sorted out, and  
14 then we'll come back and conclude with Dr. Weaver's  
15 direct and have cross-examination.

16 Take your pads with you. We'll take a  
17 20-minute recess.

18 It's different in different courts, isn't it?  
19 In state court here you stand up or you used to. It's  
20 been so long since I've been in state court I don't  
21 know. But you can sit down and examine witnesses.

22 You-all get that straight, will you? What he  
23 said basically is that the first configuration, which  
24 is the platforms, the yellow box, plus the S3 modules,  
25 which has purchase order inventory and requisitions

1 aren't accused. Isn't that what your objection was?

2 MR. McDONALD: That's right.

3 THE COURT: The question was confusing if he  
4 is giving opinion that it does infringe. In addition  
5 to that, it is beyond where you are in the discovery  
6 process. And we have to sort that out and then get  
7 your question straight, and go forward from there  
8 while we're having a recess.

9 Thank you. Recess for 20 minutes.

10 (Brief recess taken.)

11 THE COURT: All right. Have we gotten  
12 ourselves ready to go now?

13 MR. ROBERTSON: Yes, sir.

14 THE COURT: All right. Let's go.

15 BY MR. ROBERTSON:

16 Q Dr. Weaver, we were looking at Claim One, the '172  
17 patent. The fifth element down I'd like you to focus  
18 on as. It's a means for building a requisition that  
19 uses data obtained from a database relating to  
20 selected matching items on said order list. Do you  
21 see that, the order list?

22 A Yes.

23 Q Which Lawson application did we see that had the  
24 capability of providing an order list?

25 A The shopping cart. So the RSS module.

WEAVER - DIRECT

816

1 Q So in order to have an infringing configuration  
2 for Claim One of the '172 patent, you need to have the  
3 RSS application; is that right?

4 A Yes.

5 Q And the way that we have defined these  
6 configurations, configurations 2, 3 and 5 have RSS; is  
7 that right?

8 A That's my diagram as well.

9 Q So with respect to Claim One of the '172 patent,  
10 I'd like you to focus on systems 2, 3 and 5. All  
11 right?

12 A Right.

13 Q So let's go back again since we should start over  
14 on the first element. First, in configurations 2, 3  
15 and 5, do you have an opinion as to whether or not  
16 those are electronic sourcing systems as the Court has  
17 defined them?

18 A They are.

19 Q To the extent that Lawson encourages, urges, aids  
20 and abets, do they indirectly infringe that claim as  
21 well?

22 A They do.

23 Q I'm just going to be focusing now, my questions,  
24 on configurations 2, 3 and 5. Okay? Do those  
25 configurations satisfy the claim element of a database

1 containing data relating to items associated with at  
2 least two vendors maintained so that selected portions  
3 of the database may be searched separately?

4 A Yes, they do.

5 Q And in your opinion by the acts that we have  
6 described does Lawson satisfy that element for  
7 indirect infringement?

8 A Yes.

9 Q Do configurations 2, 3 and 5 have means for  
10 entering product information that at least partially  
11 describes at least one desired item?

12 A Yes, 2, 3 and 5, they do.

13 Q Do 2, 3 and 5 satisfy the element of means for  
14 searching for matching items that matched the entered  
15 product information in the selected portions of the  
16 database?

17 A They do.

18 Q How did we see that?

19 A Because of the user interface that we saw in the  
20 requisition self service.

21 Q And we saw that in your demonstrations?

22 A Sure, we did.

23 Q Do configurations 2, 3 and 5 have means for  
24 generating an order list that includes at least one  
25 matching item selected by said means for searching?

WEAVER - DIRECT

818

1 A They do.

2 Q Is it that RSS module that provides that order  
3 list or shopping cart as you referred to it?

4 A Yes, the RSS is where the shopping cart  
5 functionality resides.

6 Q Do configurations 2, 3 and 5 of the accused Lawson  
7 systems have a means for building a requisition that  
8 uses data obtained from said database related to  
9 selected matching items on said order list?

10 A They do.

11 Q Do configurations 2, 3 and 5 have a means for  
12 processing said requisition to generate purchase  
13 orders for said selected matching items?

14 A They do. We saw that in the demo.

15 Q The searching that's the subject of the means for  
16 searching which permits you to search a database,  
17 selected portions of a database, what evidence did we  
18 see that that was present?

19 A That was the search index that selected only --  
20 that searched only selected portions of the database.

21 Q Now, if Lawson provides such an electronic  
22 sourcing system to its customers and assists them in  
23 implementation, maintenance, servicing and all the  
24 training materials, guides, manuals, online services,  
25 etc., do you have an opinion as to whether or not all

1 these remaining elements are indirectly infringed by  
2 Lawson by providing those services?

3 A My opinion is that they do.

4 Q Why don't we go to the claims of the '516 patent.  
5 And that's behind tab 3 in the jurors' notebook. The  
6 first claim we're going to talk about there is Claim  
7 One. And, again, the preamble says it's an electronic  
8 sourcing system. Do you see that?

9 A Yes.

10 Q And the Court has defined that. It's the same for  
11 Claim One, for example, of the '172 patent. Is it  
12 your opinion that all five configurations that are  
13 accused here are electronic sourcing systems as the  
14 Court has defined them?

15 A Yes.

16 Q This electronic sourcing system also comprises a  
17 collection of catalogs of items stored in electronic  
18 format. Do all five configurations, as we have  
19 defined them, satisfy that claim element?

20 A Right, all five contain multiple internal  
21 catalogs, and when you add Punchout, you can add  
22 external catalogs as well.

23 Q Do all five configurations of these accused Lawson  
24 systems as we've defined them satisfy the claim  
25 element of having a first set of predetermined

WEAVER - DIRECT

820

1 criteria associated with said collection of catalogs?

2 A Yes, they do.

3 Q What evidence do we see for that?

4 A We saw in my demonstration that you could enter an  
5 item number, or vendor item, manufacturer number. You  
6 have a text box in the user interface that allowed  
7 that.

8 Q Do all five configurations of the accused Lawson  
9 systems as we've defined them have a second set of  
10 predetermined criteria associated with items from each  
11 of said catalogs?

12 A Yes, they do.

13 Q How do they do that?

14 A Again, that's the text box.

15 Q Do all five configurations have a catalog  
16 selection protocol, said catalog selection protocol  
17 relying on said first set of predetermined criteria to  
18 select less than said entire collection of catalogs,  
19 including a matching vendor identification code with a  
20 subset of said collection of catalogs wherein said  
21 subset of catalogs includes both a vendor catalog from  
22 a predetermined vendor and a second catalog from a  
23 predetermined third party that's one of a manufacturer  
24 and a competing vendor, said predetermined third party  
25 selling items corresponding to items in said vendor

1 catalog?

2 A That's a mouthful, isn't it? The answer is yes.  
3 And we saw that yesterday when I did the demonstration  
4 where I first searched for Dell and got back items  
5 that included Dell as one of these keywords. So that  
6 was my first predetermined criteria.

7 And then I added a second predetermined criteria,  
8 the Dimension 8100, and that narrowed the search down  
9 to just two items, but they were from different  
10 vendors, Dell and Diablo. So one of them was a  
11 competing vendor. Dell is a manufacturer. Dell is a  
12 competing vendor.

13 So, yes, we've seen evidence that these systems  
14 that we're talking about directly infringe the fourth  
15 element of Claim One.

16 Q The last element of Claim One of the '516 patent  
17 is a search program. Said search program relying on  
18 said second set of criteria to select specific items  
19 from said catalogs determined from said catalog  
20 selection protocol. Did I read that correctly?

21 A I think so. Again, we saw that yesterday in the  
22 demonstration where Dimension 8100 was the second set  
23 of predetermined criteria.

24 Q Did you use that second set of predetermined  
25 criteria to conduct the search?

WEAVER - DIRECT

822

1 A Yes, I did.

2 Q So do all five configurations of the accused  
3 systems as we've defined them satisfy all of the  
4 elements of Claim One of the '516 patent?

5 A Yes, they do.

6 Q If Lawson offers all five of those configurations,  
7 manufacturers, sells or imports, do they directly  
8 infringe this claim?

9 A Yes, they would.

10 Q And in the same manner, if they provide such a  
11 system to their customers and then induce them to use  
12 that system by the evidence that you've offered of  
13 assisting, aiding, abetting, encouraging, etc.,  
14 through all the various services and implementation  
15 and educational services they provide, what is your  
16 opinion with respect to whether or not Lawson  
17 indirectly infringes Claim One?

18 A I believe they do.

19 Q So they would satisfy all of the elements if they  
20 provided a system that had this capability and then  
21 performed those acts that would constitute inducement?

22 A Yes.

23 Q Let's look at Claim Two of the '516 patent, which  
24 is a dependent claim. Do you understand that?

25 A Sure. It depends from Claim One.

WEAVER - DIRECT

823

1 Q So we have to satisfy all the elements of Claim  
2 One, which you just indicated for all five  
3 configurations is infringing.

4 Claim Two talks about having catalogs stored in  
5 separate databases. Do you see that?

6 A I do.

7 Q How would the configurations as we've defined them  
8 satisfy this separate database requirement?

9 A These would be external databases that are  
10 accessible through the Punchout module.

11 Q Could they be a Punchout external plus Lawson  
12 internal catalogs?

13 A Of course.

14 Q So if it requires Punchout, only configurations 3  
15 and 5, as we've defined them, have Punchout; is that  
16 right?

17 A That's my diagram, yes.

18 Q So your opinions with respect to Claim Two, I'd  
19 like you to confine them to just configurations 3 and  
20 5 that have the Punchout application. Okay?

21 A Right.

22 Q Does Lawson configurations 3 and 5 satisfy the  
23 claim cited in Claim Two of an electronic sourcing  
24 system as recited in Claim One wherein catalogs  
25 comprised of said collection of catalogs are stored in

1 separate databases?

2 A Yes, we saw that in the Punchout to Dell and  
3 Staples.

4 Q Do they indirectly infringe in the same manner  
5 that you have been describing?

6 A Yes.

7 Q Let's go to Claim Six if we can. Again, Claim Six  
8 is a dependent claim that depends on Claim One. So  
9 all the elements of Claim One need to be satisfied,  
10 and you have already rendered an opinion that that is  
11 present.

12 Claim Six recites an electronic sourcing system as  
13 recited in Claim One where it said second set of a  
14 predetermined criteria includes at least one of a  
15 catalog number and an item textual information. Do  
16 you see that?

17 A I do.

18 Q Do configurations 3 and 5 including -- excuse me.  
19 Let me step back. What configurations satisfy Claim  
20 Six that has at least one of the catalogs -- excuse  
21 me -- wherein said set of predetermined criteria  
22 includes at least one of the catalog number and item  
23 textual information?

24 A All five.

25 Q Does Lawson indirectly infringe in your opinion in

WEAVER - DIRECT

825

1 the same manner you have been describing?

2 A Yes.

3 Q Let's look at Claim Nine if we could. Claim Nine  
4 is an independent claim, is that right, Doctor?

5 A It is.

6 Q Again, it has the an electronic sourcing system  
7 comprising. Is that in your view the same electronic  
8 sourcing system that the Court has defined?

9 A It is.

10 Q Which of the configurations has a collection of  
11 catalog items stored in electronic format?

12 A All five have this first element.

13 Q Which of the configurations have a first  
14 identification code associated with a first term in a  
15 first catalog?

16 A First item in a first catalog. That's all five.

17 Q Okay. This last element has a second  
18 identification code associated with a second item in a  
19 second catalog. Said first item and said second item  
20 being generally equivalent and wherein a selection of  
21 one identification code from one of said first and  
22 second catalogs provides the other identification code  
23 from the other of said catalogs.

24 MR. McDONALD: Your Honor, I object. I think  
25 for this claim we're just talking about all the

WEAVER - DIRECT

826

1 systems except one. So I did rather the questions  
2 were phrased in that context.

3 MR. ROBERTSON: I think when he answers the  
4 question, we can find out which configurations satisfy  
5 this element and therefore that will identify the  
6 configurations that are infringed.

7 MR. McDONALD: The prior ones he's already  
8 used all the systems. I was a little slow in reacting  
9 there.

10 THE COURT: Which ones do you say are charged  
11 with infringement in the complaint of Claim Nine.

12 MR. McDONALD: All except No. 1. Systems 2  
13 through 5 are accused of infringing Claim Nine, as I  
14 understand it.

15 THE COURT: Is that right or is it wrong?

16 MR. ROBERTSON: I don't have it committed  
17 right to my memory right this second.

18 Your Honor, let me rephrase it.

19 THE COURT: But you have to go back and  
20 rephrase all of them if he's right.

21 You-all know which ones allegedly are  
22 infringed. He says that all five infringe it, but  
23 whether he accused them of that in the complaint, I  
24 don't know. I don't have it in front of me.

25 Do you have it over there, somebody?

WEAVER - DIRECT

827

1           MR. ROBERTSON: Let me do it this way, if I  
2 could.

3 BY MR. ROBERTSON:

4 Q Doctor, this last element of Claim Nine, let's  
5 focus on that. A second identification code  
6 associated with a second item in a second catalog said  
7 first item and said second item being generally  
8 equivalent and wherein a selection of one  
9 identification code from one of said first and second  
10 catalogs provides the other identification code from  
11 the other of said catalogs, what configurations have  
12 we seen that can satisfy this claim element of Claim  
13 Nine?

14 A That one needs the catagory searched, which I  
15 demonstrated with the UNSPSC codes, and that's  
16 implemented by the requisition self service module.  
17 And as we have defined them, that's configurations 2,  
18 3 and 5.

19 Q Just configurations 2, 3 and 5 have the ability to  
20 do that UNSPSC capability in order to satisfy this  
21 claim element?

22 A That's correct.

23 Q Let's just focus on configurations 2, 3 and 5 for  
24 purposes of this claim.

25           THE COURT: The objection to the question,

1 though, I think, has been cured. When he said all  
2 five satisfy element one and satisfy element two, then  
3 per force that includes 2, 3 and 5. So he's answered  
4 the questions, but the bottom line is that only the  
5 configurations 2, 3 and 5 are charged to infringe  
6 directly or indirectly Claim Nine; is that right?

7 THE WITNESS: That's right, sir.

8 THE COURT: Was that your opinion, sir?

9 THE WITNESS: Yes, sir, it is.

10 THE COURT: All right. Now, what about  
11 indirect?

12 BY MR. ROBERTSON:

13 Q By Lawson making, using, selling, offering for  
14 sale or importing electronic sourcing system that's  
15 capable of performing all of these elements and by  
16 encouraging, aiding, assisting and abetting their  
17 customers to use that same system through all of the  
18 various evidence you have offered as to providing  
19 manuals and guides and online services and training  
20 and implementation and servicing, do you have an  
21 opinion as to whether all of the elements of Claim  
22 Nine are satisfied and Lawson indirectly infringes  
23 that claim?

24 THE COURT: As to which systems?

25 MR. ROBERTSON: Two, 3 and 5.

1 A Yes, I do.

2 Q What is the opinion?

3 A I believe that they indirectly infringe for  
4 configurations 2, 3 and 5.

5 Q Okay. Let's focus on Claim 21 if we can for a  
6 minute, of the '516. Let me focus on the last element  
7 first, if I could.

8 The last element says, Wherein said determination  
9 system includes a cross-reference table matching an  
10 identification code from a first located item with a  
11 second identification code from a second located item.

12 Do you see that?

13 A I do.

14 Q So this element requires a cross-reference table.  
15 Do you see that?

16 A I do.

17 Q What software application or module of Lawson is  
18 required in order to do this cross-reference table  
19 matching?

20 A That's requisition self service.

21 Q So, therefore, that would include configurations  
22 2, 3 and 5; is that right?

23 A That's right.

24 Q So focusing only on configurations 2, 3 and 5 for  
25 the purposes of Claim 21, is it your opinion that

WEAVER - DIRECT

830

1 those configurations comprise an electronic sourcing  
2 system?

3 A Yes, it is.

4 Q Do those configurations have a requisition module  
5 including data fields, user generated criteria entered  
6 into at least one of said data fields to generate at  
7 least partial criteria corresponding to a desired  
8 item?

9 A They do. The requisition module has data fields  
10 like the name of the requester. And the user  
11 generated criteria could be things like the vendor  
12 number, vendor name, item number, manufacturer number.

13 Q Do the configurations 2, 3 and 5 have a catalog  
14 collection searching module, said searching module  
15 including a collection of catalogs of items stored in  
16 an electronic format, a catalog collection criteria  
17 used to select less than the entire collection, said  
18 searching module being used to generate additional  
19 search module criteria for said data fields of said  
20 requisition module?

21 A They do. And we saw that when I did a search for  
22 Dell, and that returned items, and I drilled down on  
23 the items. And the item page produced the -- what's  
24 the proper name for it? Yeah, to generate additional  
25 search module criteria.

1       So in the item description, there were things like  
2 that cost, and the unit of measure, and the vendor  
3 name, and I could have used those items like vendor  
4 name as the additional search criteria.

5   Q    Do configurations 2, 3 and five have a multiple  
6 purchase order generation module, said purchase order  
7 generation module creating multiple purchase orders  
8 from a single requisition created with said user  
9 generated criteria and said search module criteria?

10   A    Yes, they do, and we saw that in three of my  
11 demos.

12   Q    Do configurations 2, 3 and 5 of the accused Lawson  
13 systems satisfy the element wherein each of at least  
14 two catalogs include a generally equivalent item from  
15 a different source of said requisition module working  
16 in combination with said catalog searching module to  
17 determine multiple sources for said item?

18   A    They do, and we saw that in my first demo where I  
19 looked for -- I used the UNSPSC codes to look for  
20 notebook computers and found two different computers  
21 from two different vendors.

22   Q    Do configurations 2, 3 and 5 satisfy the element  
23 wherein said multiple sources is limited by said  
24 catalog searching module providing a match according  
25 to said user generated criteria, said search module

1 criteria in a determination system that located items  
2 are generally equivalent?

3 A They do. And, again, we saw that in my first demo  
4 using the UNSPSC codes to drill down to notebook  
5 computers, and we found the IBM ThinkPad and the Dell  
6 notebook.

7 Q Do configurations 2, 3 and 5 satisfy the claim  
8 element wherein said determination system includes a  
9 cross-reference table matching identification codes  
10 from a first located item with a second identification  
11 code from a second located item?

12 THE COURT: He's already answered that. He  
13 answered that. That's what you started with. You  
14 started with six, and you did 1, 2, 3, 4 and 5  
15 elements.

16 Is your answer yes or no?

17 THE WITNESS: The answer is yes.

18 Q Do you have an opinion as to whether or not Lawson  
19 indirectly infringes Claim 21 by inducing infringement  
20 by all of the activities that we've previously  
21 described by offering a system that's capable of  
22 performing these claim elements?

23 A My opinion is that they do.

24 Q Would that be for all the elements?

25 A It would.

1 Q Can we go to Claim 22? Claim 22, again, is one of  
2 these dependent claims which depends on Claim 21,  
3 which adds the additional limitation wherein said  
4 determination system includes an identical  
5 identification code for each of said located items.  
6 Do you have an opinion as to whether or not the  
7 configurations of the accused Lawson systems 2, 3 and  
8 5 satisfy that claim element?

9 A My opinion is that they do. We saw that twice.  
10 Once in the demonstration where we drilled down to  
11 notebook computers and this morning where we drilled  
12 down to halogen lamps. The UNSPSC codes were  
13 identical for the two notebook computers and identical  
14 for the two halogen lamps.

15 THE COURT: Which of the configurations are  
16 we talking about; 2, 3 and 5?

17 THE WITNESS: Two, 3 and 5.

18 BY MR. ROBERTSON:

19 Q Why don't we go to Claim 29 of the '516.  
20 Actually, I'm reminded I may have overlooked indirect  
21 infringement on this one. Does Lawson indirectly  
22 infringe Claim 22 in the same manner that you have  
23 been describing, for example, as they indirectly  
24 infringe Claim 21?

25 A Yes.

WEAVER - DIRECT

834

1 Q Okay. Thank you.

2 Claim 29 recites an electronic sourcing system.

3 I'd like you to focus only on configurations 2, 3 and

4 5 for purposes of this claim.

5 Are configurations 2, 3 and 5 an electronic

6 sourcing system in your opinion as the Court has

7 defined it?

8 A They are.

9 Q Do configurations 2, 3 and 5 have a collection of

10 catalogs of items stored in electronic format?

11 A They do.

12 Q Do configurations 2, 3 and 5 have a first set of

13 predetermined criteria associated with said collection

14 of catalogs?

15 A They do.

16 Q Do configurations 2, 3 and 5 have a second set of

17 predetermined criteria associated with items from each

18 of said catalogs?

19 A They do.

20 Q Do configurations 2, 3 and 5 have a catalog

21 selection protocol, said catalog selection protocol

22 relying on said first set of predetermined criteria to

23 select less than said entire collection of catalogs

24 and including matching a vendor identification code

25 with a subset of said collection of catalogs wherein

1 said subset of catalogs includes both a vendor catalog  
2 from a predetermined vendor and a second catalog from  
3 a predetermined third party?

4 A Yes, they do. We saw that in my demo for the  
5 notebook computers.

6 Q The Court has defined "subset" in its glossary.

7 What has the Court defined "subset" to be?

8 A Less than all of a set.

9 Q Did you apply that construction in rendering your  
10 opinions?

11 A I did.

12 Q Next element of Claim 29 of the '516 recites a  
13 search program, said search program relying on said  
14 second set of criteria to select specific items from  
15 said catalogs determined from said catalog selection  
16 protocol. Do you see that?

17 A I do.

18 Q Do you have an opinion as to whether or not  
19 configurations 2, 3 and 5 satisfy that claim element?

20 A They do. We saw that in my demonstration  
21 searching for Dell as the first predetermined criteria  
22 and the Dimension 8100 as the second.

23 Q The last element of Claim 29 recites the  
24 cross-reference table linking a vendor item catalog  
25 number from said vendor catalog with an item catalog

WEAVER - DIRECT

836

1 number from said predetermined third party.

2 Do configurations 2, 3 and 5 satisfy that claim  
3 element?

4 A They do using the UNSPSC codes.

5 Q Do you have an opinion as to whether or not Lawson  
6 induces infringement of its customers by providing an  
7 electronic sourcing system that's capable of doing all  
8 of these elements of Claim 29?

9 A My opinion is that they do.

10 Q Earlier I asked you whether or not these five  
11 configurations in the manner that they are configured  
12 as we've defined them had any kind of substantial  
13 non-infringing use if they had at least two product  
14 catalogs available to them. Do you recall that?

15 A I recall the question.

16 Q With respect to indirect infringement as to all  
17 the claims you have just identified for any of the  
18 configurations that are the subject of indirect  
19 infringement, do you have an opinion as to whether or  
20 not Lawson would contribute to infringement if those  
21 systems as configured had no substantial  
22 non-infringing use?

23 A I didn't understand the question.

24 Q Sure. Let me go back. Earlier you went through  
25 this issue of whether or not there was a substantial

WEAVER - DIRECT

837

1 non-infringing use for the various configurations  
2 we've talked about here. Here we have five separate  
3 configurations. And I asked you whether or not if a  
4 configuration had at least two product catalogs, would  
5 it have any substantial non-infringing use.

6 A And I said it would not have.

7 Q So if it did not have a substantial non-infringing  
8 use and had at least two catalogs for a system, do you  
9 have an opinion as to whether or not based on that  
10 Lawson would be contributing to infringement for the  
11 same claims that you have identified here for each  
12 configuration?

13 A It would.

14 MR. ROBERTSON: Thank you, Doctor. I have  
15 nothing further.

16

17 CROSS-EXAMINATION

18 BY MR. McDONALD:

19 Q I was going to say good morning, but now I'll say  
20 good afternoon.

21 A Good afternoon, Mr. McDonald.

22 Q Now, you would agree, wouldn't you, that for all  
23 the claims that are at issue in this case, they all  
24 claim a combination of parts?

25 A They do.

WEAVER - CROSS

838

1 Q And in order to infringe Lawson's products, we  
2 need to have every element of any one claim in order  
3 to infringe that system claim, right?

4 A That's correct.

5 Q For the method claims, either Lawson or whatever  
6 party you're saying is the one that's practicing the  
7 method, every single step of that method claim would  
8 have to be satisfied in order to infringe that claim,  
9 right?

10 A That's correct.

11 Q Would you agree that at least 11 out of the 12  
12 claims in this case require multiple catalogs or a  
13 collection of catalogs?

14 A Yes.

15 Q So if Lawson's system doesn't use multiple  
16 catalogs or a collection of catalogs you would agree  
17 that 11 of the 12 claims in this case are  
18 non-infringed, correct?

19 A Correct.

20 Q Could we put up the Court's definition of the term  
21 "catalogs," please.

22 Actually, that's the definition of just the  
23 singular "catalog" here. Am I right, Dr. Weaver?

24 A Right.

25 Q Now, you applied that definition in your report

1 that you prepared for this case, is that right, in  
2 analyzing the claims in Lawson's systems?

3 A That's correct.

4 Q Now, with respect to your analysis, specifically  
5 of catalogs, you indicated that because catalog data  
6 maintained in the Lawson S3 item master database  
7 originated from vendors, for that reason the Lawson's  
8 item master database was therefore published by  
9 vendors; is that right?

10 A Yes.

11 Q You would agree that the word "originated" doesn't  
12 mean the same thing as the word "published," right?

13 A No, not necessarily.

14 Q When you say "not necessarily," are you agreeing  
15 with me or not? I am not sure.

16 A I'll say no.

17 Q So you would agree that saying published would  
18 include the concept of some kind of public  
19 dissemination?

20 A Yes.

21 Q And in contrast, "originate" would be first  
22 brought into being, right?

23 A That's what I said.

24 Q Well, you still agree that today, correct?

25 A Yes, I do.

1 Q So, for example, if I had a personal address book  
2 and I was going to put a phone number of somebody in  
3 there that came from a phone book, my address book, if  
4 it had one entry from that published phone company  
5 phone book, my address book would have an entry in it  
6 that originated from that phone book in that case,  
7 correct?

8 A Correct.

9 Q But in that case if it's my personal address book,  
10 I didn't publicly disseminate it, I just keep it in my  
11 own house, would you consider that to be a published  
12 phone book?

13 A Well, that data came from a published phone book,  
14 so yes.

15 Q So my personal address book that has one entry  
16 from a published phone book, you'd consider my address  
17 book to be a published phone book, right?

18 A Its data came from am published phone book.

19 Q What about the address book itself? It's got a  
20 collection of phone numbers including one phone number  
21 that came from that published phone notebook. Would  
22 my address book, my collection of phone numbers, in  
23 your opinion be a published phone book?

24 A Yes.

25 Q Who would have published my personal address book

1 according to you, Dr. Weaver?

2 A You have used data from a public source.

3 Q So, according to you, my personal address book  
4 that has a few entries of my own personal family and  
5 friends and one entry from the Richmond public phone  
6 book, my personal address book in your opinion was  
7 published by the phone company, right?

8 MR. ROBERTSON: Objection. It's been asked  
9 and answered.

10 THE COURT: Sustained.

11 MR. McDONALD: I didn't ask published by the  
12 phone company, Your Honor.

13 THE COURT: Been there and done that. Go  
14 ahead.

15 MR. McDONALD: Okay.

16 Q Now, if we put this in the context of a catalog  
17 now specifically.

18 MR. McDONALD: Your Honor, I'd like to use  
19 the ELMO at this point with Ms. Huey's help. Is that  
20 all right?

21 THE COURT: We're going to use what now?

22 MR. McDONALD: The machine in the corner  
23 there. We've got a catalog. I forgot the numbers on  
24 those. Can you tell me the number.

25 We have a Sears catalog and Ward's catalog

WEAVER - CROSS

842

1 here.

2 MS. HUEY: Sears is DX 257.

3 THE CLERK: DX 257, Your Honor.

4 MS. HUEY: Montgomery Ward's is DX 258.

5 BY MR. McDONALD:

6 Q So, Dr. Weaver, you're familiar with published  
7 catalogs in the paper sense, right?

8 A Yes, I am.

9 Q You've talked to the inventors relating to the  
10 patents in this suit more than once, I believe,  
11 haven't you?

12 A Briefly, yes.

13 Q Do you understand that, according to them anyway,  
14 the way this patented system came about is that they  
15 had this old system called the RIMS system?

16 A Yes.

17 Q And then they wanted to add some additional  
18 capabilities to that RIMS system, right?

19 A Yes.

20 Q And those additional capabilities were inspired by  
21 the idea that at customer installation, people using  
22 the RIMS system still had published vendor catalogs on  
23 their shelves in paper form, right?

24 MR. ROBERTSON: I'm going to object, Your  
25 Honor. This is outside the scope of my direct

1 examination. I asked nothing about the RIMS system,  
2 and Dr. Weaver is an infringement expert. He hasn't  
3 rendered any opinions with respect to any validity  
4 issues.

5 THE COURT: Sounds to me like it.

6 MR. McDONALD: Well, the RIMS system is part  
7 of the disclosure of the patent in case I'm talking  
8 about what the invention is, Your Honor, which is very  
9 relevant to his opinions and his understanding of what  
10 the invention is. And this RIMS system and what  
11 happened to add to the RIMS system, that being the  
12 invention story here, is very relevant to his  
13 testimony.

14 THE COURT: Your talking about whether the  
15 invention infringes. That's all he gave opinions  
16 about. Objection sustained.

17 If you want to call him in your case on that  
18 issue, you can do that, but that's different.

19 BY MR. McDONALD:

20 Q So a typical Sears catalog, Dr. Weaver, you would  
21 agree that's got hundreds, probably even thousands, of  
22 products described in it?

23 A Yes.

24 Q Is it organized somehow?

25 A Yes, it's organized.

1 Q How would you describe the organization of a  
2 typical Sears catalog?

3 A That it includes, as with the Court's definition  
4 here, it includes Sears part numbers, a description of  
5 the item, a cost, the vendor is known. It's Sears.

6 Q Would it typically be organized by type of product  
7 as well as ladies' clothes in one section, men's in  
8 another, and chainsaws in another?

9 A It might be, sure.

10 Q In your experience is that pretty typical of a  
11 published catalog?

12 A Yes.

13 Q And --

14 THE COURT: You mean is it typical that they  
15 are organized by product type?

16 MR. McDONALD: Yes.

17 THE COURT: Or catagory. Is that what your  
18 answer is?

19 THE WITNESS: Yes, Your Honor.

20 BY MR. McDONALD:

21 Q So, Dr. Weaver, if someone takes a Sears catalog.

22 MR. McDONALD: And, Ms. Huey, I wonder if you  
23 could just put up a page of the catalog and identify  
24 the number again for me as you're putting it up.

25 MS. HUEY: DX 257.

WEAVER - CROSS

845

1 Q DX 257. Just turn to a page with a product  
2 description in there, please.

3 This is from 1984. Can you see that, Dr. Weaver,  
4 that it says 1984?

5 A I can.

6 Q Fall-winter catalog for Sears?

7 A I see that.

8 MR. McDONALD: Could you turn, Ms. Huey, to  
9 an entry in the catalog there and zoom in. Can you  
10 zoom that to one of the dresses there, the  
11 description, let's say, on the left side, please.

12 THE COURT: You want the description or the  
13 picture?

14 MR. McDONALD: The description.

15 BY THE COURT:

16 Q We'll use No. 1 there under the dress circle.

17 Do you see there, Dr. Weaver, there's a  
18 description that looks like it starts off with 1  
19 through 5 of some various ladies' clothes, and then we  
20 have the number 1 next to the dollar figure as low as  
21 \$42?

22 A I see the 1 through 5.

23 Q Okay. Do you see the number 42?

24 A Yes. Oh, okay.

25 Q Right next to that there's the parenthetical 1?

1 A Yes, I see that.

2 Q That's got a description about a simply elegant  
3 fortrel polyester wool jersey there, right?

4 A Yes.

5 Q So this would be a typical catalog type of entry,  
6 correct?

7 A It is for Sears.

8 Q For Sears, right. Different companies selling  
9 different products would describe their products  
10 different ways, right?

11 A Right.

12 Q But the whole point of the description is to have  
13 enough of a description there so that somebody  
14 browsing through catalog looking for things that they  
15 might want to buy, they get enough information to make  
16 a decision about whether they might want to buy that  
17 product, correct?

18 A They certainly do. The description is intended to  
19 inform about the product.

20 Q Inform potential buyers about the product?

21 A Inform potential buyers about the product.

22 Q This is written from the standpoint of the seller  
23 of the products, right, trying to get business?

24 A Correct.

25 Q Now, if I'm making a shopping list, let's say, and

WEAVER - CROSS

847

1 I make a note about this dress on my own piece of  
2 paper here. So I just make a note of wool jersey,  
3 let's say. And I put down the word "Sears," and I  
4 make a note of the catalog number of it. I could do  
5 that, right?

6 A You could.

7 Q And on this page, do you see it looks like there's  
8 a catalog number for a cranberry, I assume color of  
9 the dress, beginning with T31?

10 A Yes, I see that.

11 Q And then it goes on H49016F, correct?

12 A Yes.

13 Q So if I was going to perhaps place a call or go on  
14 the Internet, I've might write down that catalog  
15 number on my personal shopping list, right?

16 A You might.

17 Q Perhaps I have a coupon with Sears. So I might  
18 write next to that "use 20 percent off coupon" on my  
19 own personal list, correct?

20 A You could do anything you like with your own  
21 personal list.

22 Q That would be the sort of thing somebody might do  
23 while putting together a shopping list, right?

24 A They might.

25 Q Would you consider my personal list at that point

1 a catalog published by Sears?

2 A No. You're looking at the catalog published by  
3 Sears.

4 Q I know. But that piece of paper of mine, using  
5 the Court's definition of "catalog," would you  
6 understand that piece of paper that I wrote to be a  
7 catalog?

8 A No, it just contains data from the catalog.

9 Q It just has information that originated from the  
10 Sears catalog, right?

11 A Yes.

12 Q So I thought you said that when a list contains  
13 information that originates from a vendor, that's a  
14 catalog under the Court's definition published by  
15 vendors?

16 A I did say that.

17 Q What's the difference? Can you help me understand  
18 the difference?

19 A It depends on whether you're using information  
20 originated from the vendor.

21 Q I wrote down the catalog number in my example,  
22 right?

23 A Yes.

24 Q That originated from Sears, right?

25 A Yes, but you had other information there that

1 didn't come from the vendor.

2 Q Oh, some if my list in part originates from a  
3 vendor includes additional information about that  
4 product that I add, it's no longer a catalog under the  
5 Court's definition? Have I got that right?

6 A No, that's not correct.

7 Q Okay. Maybe I'll have to ask you again. Can you  
8 explain to me why my piece of paper isn't a catalog  
9 that originated from Sears under your definition as  
10 you understand and applied it of the Court's  
11 definition of catalog?

12 A I think I finally understand your question. So if  
13 you have copied information out of the Sears catalog,  
14 and what you've written down originated from Sears, so  
15 it's the same information, then it is the same as the  
16 Sears catalog.

17 Q Well, that actually wasn't my question.

18 A Sorry.

19 THE COURT: Mr. McDonald, we're not talking  
20 about a Sears catalog in this case. We're talking  
21 about the way that Lawson does certain things with its  
22 item masters and the things that it uses in the  
23 Punchout.

24 Now, let's get the examination over to those  
25 topics and find out why it is he thinks those meet the

1 definitions. We're not dealing with Sears, and I  
2 don't think it's particularly helpful to wrestle with  
3 this issue. It's hard enough for the jury to  
4 understand what they've got to decide without being  
5 distracted by Sears. Is Montgomery Ward even in  
6 existence?

7 MR. McDONALD: I got them on Ebay.

8 Take it off the screen, please.

9 BY MR. McDONALD:

10 Q Let's talk now about Lawson's product, Dr. Weaver.  
11 Lawson's product with the requisition and purchase  
12 order and inventory control modules, that's all built  
13 and uses what's called an item master, right?

14 A It does.

15 Q And the item master is a list of products  
16 essentially, correct?

17 A Sure. It contains product information for many  
18 products.

19 Q That item master has items on it that are selected  
20 by the Lawson customer who buys the Lawson system,  
21 correct?

22 A Yes.

23 Q And that customer puts on that list the products  
24 it chooses to keep track of for its own purposes,  
25 correct?

1 A Sure. The customer chooses the catalogs and has  
2 the products.

3 Q That wasn't what I asked you. You added a little  
4 bit of extra stuff there at the end.

5 A Ask your question again.

6 Q Customers select the information that goes on the  
7 item master for its own personal purposes, correct?

8 A Yes.

9 Q And that item master is actually originally  
10 associated in the Lawson's system with the inventory  
11 control module?

12 A Correct.

13 Q And so really the starting point for that item  
14 master in the Lawson system is to control and keep  
15 track of the customer's personal inventory of items,  
16 correct?

17 A Yes, it begins that way.

18 Q When you say "it begins that way," does it end up  
19 some other way?

20 A I was thinking about what I was talking about  
21 yesterday, which was Lawson provided utility programs  
22 to bring in catalog information and add it to the  
23 database.

24 Q Now, in your discussion, did you talk at all about  
25 what happens after the Lawson system brings in what

1 you call catalog information?

2 A Yes, sir.

3 Q What did you say happens to that data after that?

4 A That is loaded into the item master and the vendor  
5 type.

6 Q Is it loaded as is, Dr. Weaver?

7 A Well, depending on what format it originates. It  
8 might be loaded as is or it might be converted first.

9 Q Have you seen any testimony at all or seen any  
10 documents in this case that would indicate that, in  
11 fact, that data that's imported from vendors undergoes  
12 very significant changes before it becomes entered  
13 into the item master in the Lawson system?

14 A Sure. I looked at -- I showed documentation that  
15 showed how the data conversion was to occur and what  
16 formats were required.

17 Q Have you got any knowledge about actual customers  
18 and what actual customers have done with data that  
19 they have imported from vendors in the Lawson system?

20 A Well, I reviewed deposition testimony that said  
21 that they have done this.

22 Q All right. What is your understanding of what  
23 customers do after they get that data imported?

24 A Into the item master?

25 Q Let me clarify my question. What is your

1 understanding as to what customers do with the data  
2 that is imported into their system from a vendor to  
3 change it again before it gets into the item master?

4 A They run conversion programs.

5 Q What is the purpose of those conversion programs?

6 A To change the format into that required by Lawson.

7 Q Is it your understanding that the Lawson customers  
8 ever take out information that comes in during that  
9 importation process before putting that information  
10 into their item master?

11 A I don't know.

12 Q Did you investigate that at all as part of your  
13 analysis in this case?

14 A Taking out data?

15 Q Right.

16 A No, I did not investigate that.

17 Q About how many hours have you put into this case  
18 now, Dr. Weaver?

19 A Four hundred.

20 Q About how much are you getting paid?

21 A Four hundred dollars an hour.

22 Q What does that add up to?

23 THE COURT: Four times four is 16. You can  
24 add the zeros to that.

25 A I'm starting to fade. \$160,000.

1 Q \$160,000 you've been paid in this case and you  
2 have never investigated what a Lawson customers does  
3 with the vendor data that they import to change it  
4 around before it goes into the item master that you  
5 say are catalogs for purposes of this case; do I have  
6 that right?

7 A What I looked at was what functionalities Lawson  
8 provided to convert the data. And that's what I  
9 discussed.

10 Q So what's the answer to my question?

11 A Well, please ask it again.

12 THE COURT: Maybe if you shorten it, you can  
13 ask it without all the gloss on it. Something like:  
14 Did you investigate whether Lawson's customers deleted  
15 data from what they were importing? Something like  
16 that.

17 Q Dr. Weaver, did you investigate whether customers  
18 deleted any data before putting it in the item master?

19 A I did not.

20 Q Did you investigate, Dr. Weaver, as part of your  
21 400 hours involved in this case whether or not  
22 customers add additional information associated with  
23 the individual products that come from the vendor  
24 before putting that information into the item master?

25 A I did not.

1 Q Why not?

2 A There was no need.

3 Q No need? I withdraw that question.

4 Do you have any understanding as to whether or not  
5 in the Lawson system customers could add additional  
6 data from taking it from a vendor before putting it  
7 into the item master?

8 A I don't think that's relevant, so I didn't look at  
9 that.

10 Q Do you know whether or not a customer might put  
11 their own customer number, for example, before putting  
12 it in the item master?

13 A I did not investigate that.

14 Q Did you check out whether or not customers would  
15 actually, in effect, delete any long descriptions of a  
16 product that the vendors provided them before loading  
17 the information into the item master?

18 A I did not investigate that.

19 Q Do you have any understanding at all as to how  
20 many characters the customer has to work with when  
21 inserting an item description for a product that goes  
22 into the item master?

23 MR. ROBERTSON: Objection, Your Honor.

24 Relevancy.

25 THE COURT: Overruled.

1 A I didn't investigate that because that was not  
2 part of the Court's definition of catalog. My concern  
3 was would the item master contain catalog data. My  
4 conclusion is that it would under the Court's  
5 definition. The Court doesn't say anything about how  
6 many characters are allowed in a description.

7 Q But you understand there's a big difference here,  
8 isn't there, Dr. Weaver, between how the data arrives  
9 at the Lawson system from the vendor, when it comes  
10 through in effect the portal or the doorway into the  
11 Lawson system on the one hand, and what the data  
12 actually looks like when it gets into the item master  
13 on the other hand? Wouldn't you agree that's a pretty  
14 big difference potentially?

15 A No, sir.

16 Q What if all the data is set aside except a catalog  
17 number before it goes into the item master and the  
18 customer adds their own description and adds several  
19 new fields to the item master for things they are  
20 interested in such as how many do I have in inventory?

21 A That's irrelevant under the Court's definition.

22 Q As part of your analysis for this case you went  
23 through the patents-in-suit and read them with an eye  
24 towards what one of ordinary skill in the art would  
25 understand; is that correct?

1 A I did.

2 Q In these patents, when they talk about all this  
3 computerized stuff, they don't include all the source  
4 code or all the computer programming stuff that many  
5 computer programmers would have to actually write to  
6 implement it, correct?

7 A You mean is there source code in the patent?

8 Q Right.

9 A No, it is not.

10 Q Is the reason for that that one of ordinary skill,  
11 if you tell them how to do something in the patent,  
12 ordinary skill in this field, they would be able to  
13 write the code to do it?

14 MR. ROBERTSON: Objection. That was not  
15 discussed on direct.

16 MR. McDONALD: We talked about one of  
17 ordinary skill in the direct, Your Honor. I'm trying  
18 to explore their knowledge.

19 MR. ROBERTSON: I didn't ask anything about  
20 how --

21 THE COURT: What's that got to do with  
22 infringement? That's what I'm having trouble  
23 following. He didn't inquire about source codes with  
24 this witness that I remember.

25 MR. McDONALD: I want to make sure we have an

1 understanding of what that person of ordinary skill  
2 really knows at this point because I don't think  
3 that's very clear yet.

4 THE COURT: Is he tendered as an expert in  
5 source code? I thought somebody else was. I may be  
6 wrong about that. I thought there was another  
7 witness. Am I wrong?

8 MR. ROBERTSON: No, Your Honor, you're not  
9 wrong. That would be Mr. Niemeyer.

10 THE COURT: Objection sustained.

11 BY MR. McDONALD:

12 Q Dr. Weaver, is the person of ordinary skill in the  
13 art that you considered for purposes of your opinion  
14 someone that does have skill in writing computer code?

15 A Yes.

16 Q Do you believe your qualifications allow you to  
17 analyze this case from someone with that type of  
18 knowledge?

19 A Yes.

20 MR. McDONALD: Could we put up the first page  
21 of the patent, please, the description of the '683  
22 patent.

23 Q Would you like to go to column 1?

24 THE COURT: What did you say, sir?

25 MR. McDONALD: I'd like to go to column 1,

1 Plaintiff's Exhibit 1, the '683 patent.

2 If we could blow up the first paragraph under  
3 "background of the invention."

4 BY MR. McDONALD:

5 Q Dr. Weaver, when you did your analysis for this  
6 case, you tried to look at it from the perspective of  
7 one of ordinary skill in the art who actually read the  
8 patents, right?

9 A Correct.

10 Q So you tried to put you're analysis in terms of  
11 what one of ordinary skill would understand using the  
12 Court's constructions in the context of the patents,  
13 correct?

14 A That's correct.

15 Q And you understand that one of ordinary skill  
16 would understand that this invention as stated here in  
17 the background would relate to systems and method for  
18 interfacing product information such as typically  
19 found in vendor catalogs that are provided to  
20 customers and requisition purchasing systems and  
21 methods that may use the results of searches and  
22 product information, right?

23 A Right.

24 Q That's the very first sentence in the body of the  
25 patent here, correct?

1 A Correct.

2 Q Now, the body of the patent also refers to a prior  
3 system called the Fisher RIMS system, correct?

4 MR. ROBERTSON: Objection, Your Honor,  
5 relevancy. I didn't ask anything about the Fisher  
6 RIMS system. It has nothing to do with his opinions.

7 THE COURT: I'm not sure where he's going.  
8 So I'm going. So I'm going to let that particular  
9 question stand. Then I'll have to wait and see where  
10 about where it goes. That one is not objectionable  
11 because it's a preliminary question.

12 BY MR. McDONALD:

13 Q Would you like me to repeat question?

14 A Please.

15 Q I'll probably ask a new one because I don't  
16 remember it either exactly. Isn't it true that the  
17 patent talks about a preexisting requisition and  
18 purchasing system called the Fisher RIMS system?

19 A It does.

20 Q A number of the drawings in the patents-in-suit  
21 actually have modules that correspond to software  
22 modules from that old RIMS system, right?

23 A Yes, some of the figures contain a module that's  
24 labeled RIMS.

25 Q Isn't it true that some of the Court's claim

1 constructions on the means-plus-function clauses  
2 actually use modules that are described in the patent  
3 as coming from the old Fisher RIMS system?

4 A Yes.

5 Q So that Fisher RIMS system is pretty important to  
6 the word construing the claims in this case, isn't it,  
7 Dr. Weaver?

8 A It's the background of the invention.

9 Q It's not just the background. It's actually some  
10 of the modules that are used by the Court to construe  
11 the scope of some of the claims, right?

12 THE COURT: I'm not sure that's right, Mr.  
13 McDonald. As I recall, there is a module, a figure  
14 that has a module that has RIMS in it, but the  
15 inventor testified yesterday that that's not the  
16 Fisher RIMS system, it's the RIMS as he modified it.  
17 And whatever it was that the inventor used in those  
18 terms is what was used, I believe. Let's take a  
19 figure you're talking about so I can understand.

20 MR. McDONALD: Sure. Why don't we turn to  
21 figure 1A.

22 THE COURT: It may be that my recollection is  
23 wrong, but I want to make sure we're right.

24 Where does it have RIMS in it? I don't see  
25 it.

1           MR. McDONALD: I'll show you where it makes  
2 sense to start, Your Honor. Can we go to column 4 of  
3 the '683 patent at the very top, lines, approximately,  
4 1 through 10.

5           THE COURT: Which figure are we talking about  
6 here?

7           MR. McDONALD: It's figure 1A, but this  
8 paragraph talks about 1A, but I think it's helpful to  
9 set the context of what figure 1A is, Your Honor, to  
10 start with column 4, if I may.

11           So at the top of column 4, do you see there,  
12 Dr. Weaver, where it says "electronic sourcing system  
13 5 also includes a requisition purchasing system 40"?  
14 I'm going to stop there for a second. Let me know if  
15 you need to look at more of the patent or if you need  
16 a copy or something, but do you understand that the  
17 electronic sourcing system 5 represents the preferred  
18 embodiments of that system for purposes of the  
19 invention described in these patents?

20 A    Would you ask that again?

21 Q    Is it your understanding that that reference to  
22 electronic sourcing system 5 here in this section that  
23 I just read from column 4, that's referring to  
24 preferred embodiments of the electronic sourcing  
25 system of the present invention described in the

1    patents?

2           THE COURT: Figure 1A doesn't have a 5 in it.  
3    It has a 40, which is a requisition purchasing system,  
4    which is listed as 40, and has (RIMS) and the inventor  
5    testified that was the RIMS as modified. That's what  
6    I was talking about.

7           Are you asking him whether he has some view  
8    different than the inventor?

9           MR. McDONALD: I'm going to ask him what the  
10    patent itself says, Your Honor, because it does  
11    conflict with the inventor. And I didn't get a chance  
12    to ask the inventor that, but he's explained that, and  
13    I want to establish that the RIMS system is very  
14    fundamental to the interpretations of the claim.

15           THE COURT: I didn't think he said that that  
16    I know of. I haven't heard that yet. What does that  
17    have to do with infringement?

18           MR. McDONALD: It has to do with the  
19    means-plus-function clauses. It has to do with what  
20    is and is not catalogs. It's got --

21           THE COURT: Means-plus-function clauses would  
22    be determined in accordance with the interpretations I  
23    gave, not with what he thinks the patent terms mean.  
24    That's actually asking him to do claim construction.

25           MR. McDONALD: No, we're just walking through

1 and getting an understanding of how he applied your  
2 claim constructions. If I just get a chance to ask a  
3 few questions here --

4 THE COURT: I'm telling you, y'all don't seem  
5 to understand this, but for lay people its difficult  
6 to follow what you're going through, and it's  
7 confusing to them and to any lay person, not just  
8 them, the jury, and I think it's important that we  
9 stay on track about what we're here to have this jury  
10 decide.

11 And I don't see how this does it. In fact, I  
12 think it has the potential to have him interpret the  
13 claim, a claim that I've already interpreted, which  
14 they are going to be told and have already been told  
15 can't be done, and I think that therefore confuses  
16 them because it puts in their databases upstairs in  
17 their minds something they can't even consider.

18 So why don't you leave this alone, and I'll  
19 deal with you after the jury is gone on this, and you  
20 can come back to it if I allow it. I'm just having  
21 trouble with it.

22 MR. McDONALD: That sounds like something I  
23 should not look forward to, but all right.

24 THE COURT: No. I don't think it will be an  
25 unpleasant experience like you don't like the result.

1           MR. McDONALD: Well, I hope we're all going  
2 to be happy at the end of it.

3 BY MR. McDONALD:

4 Q   How about if we go to figure 1A of the '683  
5 patent. Can we blow that up at least a little so we  
6 can capture the whole thing.

7           Would you agree, Dr. Weaver, that one of ordinary  
8 skill reviewing the patent and specifically figure 1A  
9 would see something in figure 1A that represents the  
10 catalog database?

11 A   Well, there is a portion, of course, labeled  
12 catalog database numbered No. 36.

13 Q   And that's got multiple catalogs in it in the  
14 preferred embodiment of the invention, correct?

15 A   Yes, it does.

16 Q   Does the patent describe those catalogs as  
17 published by distributors and vendors and suppliers?

18 A   Yes.

19 Q   Are there other databases that are also shown in  
20 figure 1A?

21 A   Yes.

22 Q   Those other databases are not depicted as  
23 catalogs, correct?

24 A   No, they have separate labels, yes.

25 Q   It's your understanding that those other databases

1 that are shown here from the old RIMS system would not  
2 be considered product catalogs, correct.

3 A As you know, I'm excluded from hearing the  
4 inventor's testimony, so I have not heard it, but I  
5 heard the Judge say that this was a modified RIMS  
6 system.

7 Q Wouldn't you agree that according to the  
8 description of the embodiments of the invention in the  
9 patent specification there are no product catalogs  
10 stored in the RIMS databases?

11 MR. ROBERTSON: Your Honor, I object at this  
12 point. We're going into areas that have nothing to do  
13 with the infringement opinions Dr. Weaver has offered.

14 MR. McDONALD: This has to do with what is  
15 and what isn't in the catalog as depicted in the  
16 patent itself.

17 THE COURT: It has some marginal relevance to  
18 that, but it does it in the context of an issue or of  
19 a topic that really isn't involved in the issue of his  
20 testimony and, therefore, I think it's under 403  
21 confusing and leads to delay and confusion. So I  
22 sustain the objection even though there is marginal  
23 relevance to it.

24 Let's just get to what we're talking about  
25 here in this case instead of trying to get at it

1 indirectly. Let's just go directly to it.

2 BY MR. McDONALD:

3 Q In the demonstration unit for the Lawson system  
4 that you reviewed, I think you indicated yesterday  
5 that the combination of the item master and the vendor  
6 item table in there was the catalog; is that right?

7 A I said that the data represented in the item  
8 master and in the vendor item table was imported. It  
9 can be imported from a catalog.

10 Q I'm asking a little different question. So let me  
11 try that again. Do you recall yesterday saying, I  
12 think when the Judge asked you some questions and  
13 maybe after that as well, that the combination of item  
14 master and the vendor item table in the Lawson system  
15 is a catalog?

16 A I have to be very careful about the wording. The  
17 combination of the item master and the vendor item  
18 table, all of the information in there constitutes  
19 what has been input and what has been input can be  
20 multiple vendor catalogs. So it's not that the item  
21 master and the vendor item table are a catalog. It  
22 contains vendor information from many vendors and  
23 represents many catalogs or at least it can.

24 Q Do you or do you not remember saying yesterday  
25 that the combination of the item master and the vendor

1 item table were a catalog?

2 A I do not remember saying that.

3 Q So you're saying in the Lawson system there's many  
4 catalogs? Did I hear that right?

5 A If many catalogs are imported, there are many  
6 catalogs in the Lawson database.

7 Q And that database is the combination of this item  
8 master and the vendor item table?

9 A Yes, sir.

10 Q So that demo unit that you had had data in those  
11 two item master and vendor item table databases?

12 A Yes.

13 Q How many catalogs are in there?

14 A I didn't count them, but we know from my  
15 demonstrations that we saw items from Dell and this  
16 morning from Granger and from -- what was the other  
17 one? Gosh, it's gone right out of my head. Anyway, I  
18 made a point of circling multiple vendors and so there  
19 were multiple vendor catalogs present in the  
20 demonstration system.

21 Gexpro is the one I was trying to think of.

22 Q How many items were loaded up in the demo model  
23 that you used?

24 A I certainly didn't search through it and count, so  
25 I don't know.

WEAVER - CROSS

869

1 Q Do you have an estimate?

2 A I didn't search through it and count, so I don't  
3 know.

4 Q Did you talk to anybody about adding additional  
5 items to the demo model?

6 A Yes, I did.

7 Q Did you talk about how many items to add?

8 A No, I explained what functionality we needed to  
9 demonstrate.

10 Q So as you sit here right now you don't know how  
11 many items are on the demo model that you reviewed for  
12 purposes of your opinion?

13 MR. ROBERTSON: He's answered that three  
14 times, Your Honor.

15 THE COURT: Yeah. You-all are the ones that  
16 provided it with whatever it had in it, so you-all are  
17 better equipped to know what was on it than he is. He  
18 said he didn't count. Let's go.

19 Q Just to be clear, you did add additional items  
20 after Lawson sent you the demo, right?

21 A As you remember my testimony, I did three  
22 demonstrations with the system as it was delivered,  
23 and then added some data, and that was only for the  
24 demonstration that we did with the halogen lamps.

25 Q You only added data for purposes of the halogen

1 lamp demonstration?

2 A In order to show the richer, fuller ability to  
3 search categories.

4 THE COURT: Did you add it or did the Lawson  
5 people add it?

6 THE WITNESS: My understanding from the  
7 attorneys is that they engaged a Lawson -- I don't  
8 know if it was an employee or a consultant, and this  
9 Lawson person assisted them with adding data.

10 THE COURT: And you didn't put it on?

11 THE WITNESS: I didn't do it.

12 Q The Lawson person assisted who?

13 THE COURT: Some consultant hired by the  
14 lawyers who put it on, I think is what he's saying,  
15 and he didn't actually put it on.

16 BY MR. McDONALD:

17 Q Is it your understanding that any search you could  
18 do on the Lawson item master product description for  
19 any keyword search in itself could generate another  
20 catalog?

21 A Yes, pretty much.

22 Q So if you had searched for the word "blue," you  
23 get back results from the Lawson item master that  
24 would be the catalog of blue things?

25 A Yes.

1 Q Or things with the word "blue" in their  
2 description?

3 A It would.

4 Q If I searched for the number 5, it would generate  
5 a list of all the things that had a number 5 in the  
6 description?

7 A It would.

8 Q In your opinion, each one of them is a separate  
9 catalog; is that right?

10 A Yes.

11 Q So is there really any limit to the number of  
12 catalogs in the Lawson item master the way you looked  
13 at it?

14 A No.

15 Q You are familiar with testimony from customers of  
16 Lawson in this case; is that right?

17 A I read some depositions, yes.

18 Q Isn't it true that those customers have just a  
19 handful, less than 10 items on average, that they get  
20 from each vendor loaded into their item master?

21 A No, sir.

22 THE COURT: You mean people that were  
23 deposed?

24 MR. McDONALD: People that were deposed,  
25 that's right. They have not testified yet in this

WEAVER - CROSS

872

1 case, but he's reviewed.

2 Q You have reviewed deposition testimony of some  
3 Lawson customers, correct?

4 A Yes.

5 Q And those customers will have just a few items  
6 from each vendor on average in their systems, won't  
7 they?

8 A No, sir.

9 Q Wasn't it true that for Robert Wood Johnson,  
10 that's a Lawson customer, correct?

11 A Yes, it is.

12 Q And that's mentioned in your report that they have  
13 approximately 36,000 items in the item master, right?

14 A Yes.

15 Q That was with approximately 3,000 distributors and  
16 vendors, right?

17 A Well, I don't remember those number, but --

18 THE COURT: Is this designed to show that  
19 there are a few? 36,000 is not a few.

20 BY MR. McDONALD:

21 Q No, but it's only about 12 per vendor, right, Dr.  
22 Weaver, if it's 36,000 items from 3,000 vendors?

23 A Nobody said there was a uniform distribution of  
24 the items over vendors.

25 Q No, but on average, that would be the average,

1 right?

2 A It's the average, but you can't draw the  
3 conclusion that therefore there are few items per  
4 vendor. You can say on average there are 12 in that  
5 instance, but there could be 30,000 from one vendor  
6 and the rest distributed over the others. I didn't  
7 ask that question. I didn't read --

8 THE COURT: That's enough. Thank you.

9 I think you can go on to another topic.

10 Q Do you have an understanding, Dr. Weaver, as to  
11 about how many words a Lawson customer can use to  
12 describe the product in the item master?

13 A No, because that's not a part of the Court's  
14 definition of "catalog."

15 Q Would you agree that the purpose of the Lawson  
16 item master is different from the purpose of a typical  
17 published catalog like a Sears catalog?

18 A No.

19 Q Would you agree that the typical published Sears  
20 catalog is intended to sell products to people?

21 A That is one of its purposes.

22 Q Would you agree that the Lawson item master, its  
23 purpose is not to sell products to people?

24 A Its purpose is to find items, yes.

25 Q You would agree that the Lawson item master's

1 purpose is not to sell products, correct?

2 A I would.

3 Q Now, you talked a little bit in your direct  
4 testimony about selecting portions of a database to be  
5 search, correct?

6 A Yes, I did.

7 THE COURT: Before you go there, do you have  
8 any understanding about what happens if I'm a customer  
9 of Lawson's, and I order a Punchout, and it comes from  
10 Dell, whether Lawson gets any money from that or not?  
11 Do they get paid or does the money all go to Dell?

12 THE WITNESS: In my testimony yesterday and  
13 in the documentation I showed, I said that when Lawson  
14 sets up an agreement with a Punchout partner, Dell or  
15 whoever, that the Punchout partner pays a fee.

16 THE COURT: I'm talking about on an  
17 individual purchase. Does Lawson get a cut or a  
18 percentage or fee or anything on the purchase basis?

19 THE WITNESS: I don't know on a per purchase.

20 THE COURT: Sorry for interrupting. I  
21 apologize. Excuse me, Mr. McDonald.

22 BY MR. McDONALD:

23 Q If you can give me a second, I will try to get to  
24 the Punchout and pick up where you left off.

25 THE COURT: I interrupted you. I shouldn't

1 have. But you had just gotten started, and I wanted  
2 to follow-up with what he was saying.

3 BY MR. McDONALD:

4 Q You do understand, don't you, Dr. Weaver, that  
5 Lawson doesn't dictate what vendors make available to  
6 customers when they are a Punchout partner?

7 A I think that's right.

8 Q All those websites you mentioned yesterday from  
9 Staples, that Stapleslink.com, Lawson has no control  
10 over that website, correct?

11 A Oh, goodness, that's not true. Lawson has immense  
12 control over that website.

13 Q Tell me about the control Lawson has over  
14 Stapleslink.com.

15 A When the Lawson customer clicks on that -- which  
16 one did you say. Staples?

17 THE COURT: Stapleslink.com; is that right?

18 MR. McDONALD: That's right.

19 A When the customer clicks on that Staples icon,  
20 then Lawson sets up a special connection with the  
21 Staples link, and it exchanges authentication  
22 information. It issues that Punchout setup request.  
23 It waits for the servlet on the Stapleslink.com  
24 website to send back the Punchout setup response that  
25 includes the URL to which Lawson is supposed to

1 redirect this particular customer.

2 So the customer goes to that site. The customer  
3 shops. Presumably buys something. Puts it in the  
4 shopping cart. Then the shopping cart contents at the  
5 time of checkout are returned in a special format.  
6 Lawson interprets that format. Puts it in a cache  
7 data file. Closes out the session securely, and then  
8 starts processing the checkout items to put them into  
9 the Lawson shopping cart. So Lawson has immense  
10 control.

11 Q Isn't everything you just described relating to  
12 simply the communication back and forth with the  
13 Stapleslink.com website as opposed to what is actually  
14 posted or shown or displayed or done at the website  
15 itself?

16 A That's what I'm trying to say, yes, that Lawson  
17 has complete control over the communication system.

18 Q Let me ask you a different question.

19 A Sure.

20 Q The website itself, who controls the  
21 Stapleslink.com website? That's a different question  
22 from how is the communication to that website, right?

23 A I just explained the communications.

24 Q I'm exploring the issue of the difference between  
25 the communication with the website and who is actually

1 controlling the website itself. Do you understand  
2 that distinction?

3 A Well, the control of the website, as I've just  
4 explained, is a shared responsibility because the  
5 servlet, which is part of Staples, is returning a URL  
6 to Lawson saying where should we redirect the user's  
7 browser.

8 Q When I have --

9 THE COURT: Excuse me, Mr. McDonald. Are you  
10 asking him who has control over putting on the Staples  
11 link website whatever is on the website?

12 MR. McDONALD: That's where I was going.

13 THE COURT: Well, that's different than  
14 whether there's control because control has a  
15 component of it in the interrelated nature of things,  
16 according to him, that I think is distracting from the  
17 purpose.

18 What you want to know is: Who is it that  
19 puts products on the Staples link website, right?

20 MR. McDONALD: Let's try that.

21 THE COURT: Try that and see if you like it  
22 and go from there and see if you can find another one  
23 you like.

24 BY MR. McDONALD:

25 Q With the Stapleslink.com website, who is in charge

1 of loading up a list of products on that website?

2 A Staples is in charge of the content displayed on  
3 the website.

4 Q Does Lawson have any say in what content Staples  
5 displays at that website?

6 A I don't know.

7 Q If I understood you right, when a customer uses  
8 that Stapleslink.com Punchout, can they do a search  
9 for products at the Stapleslink.com website?

10 A Yes.

11 Q Whose responsible for putting together the  
12 computer stuff that you need to do a search at the  
13 Stapleslink.com website?

14 A The search on the stapleslink.com website uses the  
15 Staples search engine.

16 Q How do you know that?

17 A Because that's the way these systems work.

18 Q Have you ever done anything to check it out?

19 A Well, I know how the protocols operate. And once  
20 you're redirected to that site, now you're working in  
21 that environment at Staples.

22 Q My question is did you do anything for your  
23 \$160,000 to check that out?

24 A No.

25 Q Did I understand right for this case you did talk

1 to a source code expert, right?

2 A I did.

3 Q Because you thought that was pretty important to  
4 understand the source code and how that operated  
5 behind the scenes in the Lawson system, right?

6 A Yes.

7 Q You didn't check that out for the Punchout  
8 partners that do the actual searching and display the  
9 actual data that you showed us in those demonstrations  
10 yesterday, right?

11 A I never made an issue of it, so no. There's no  
12 need to check it out.

13 Q I think in your demo of the Punchout websites  
14 yesterday you were also going through the issue of  
15 availability of inventory; is that correct?

16 A Correct.

17 Q Is it true that in your examples the Staples and  
18 the Dell, not Lawson, would have control over checking  
19 out the inventory?

20 A That's true, the information comes from the  
21 Punchout partner.

22 Q Lawson has no idea what Dell or Staples has in  
23 inventory, right?

24 A Probably not.

25 Q And you understand that for purposes of the claims

1 in this case there's some structure that has to be  
2 analyzed and compared to the Court's interpretation of  
3 the claims to make sure the structure corresponds?

4 A Of course.

5 Q You didn't do that analysis with respect to the  
6 searching or checking inventory functions at the  
7 Punchout vendor websites, correct?

8 A I think you've mischaracterized what I did. I  
9 understand how -- let's use Staples as your example.  
10 I understand how a website works. I understand how a  
11 search engine works. I understand how one checks  
12 inventory. What I was concentrating on, and this is  
13 consistent -- in my opinion, it's consistent with the  
14 Court's construction of the means-plus-function claims  
15 was that Lawson had control over what information was  
16 sent to the Staples site and what information was  
17 returned. And I think I demonstrated that clearly.

18 Q So you just think because you have knowledge, you  
19 can assume what's going on at those vendor websites  
20 that you didn't have to check that out?

21 A That's right.

22 THE COURT: Is this a convenient place in  
23 your examination to break for lunch, Mr. McDonald?

24 MR. McDONALD: This would be a dandy spot,  
25 Your Honor.

1                   THE COURT: I'm glad we're doing something  
2 dandy.

3                   Ladies and gentleman, today I thought you  
4 would like to avoid being held captive in the  
5 building, so I didn't have lunch ordered for you.

6                   We'll take an hour for lunch. There's a  
7 cafeteria in the basement. I checked the specials  
8 today, and they have a salad bar. They have shrimp  
9 that's mostly, I think, fried bread. They have sloppy  
10 Joes, and they make all kinds of sandwiches, which I  
11 often eat down there. Around the corner, if you go  
12 out to the left down 7th Street, to 7th and Franklin.  
13 Is it 8th? Right. Go to the right then. Go down to  
14 8th and Franklin. That's two blocks down. There's a  
15 Subway.

16                  If you go out of the Court and go to the  
17 right, there's the City Hall building, which is a tall  
18 marble-looking building, glass and marble, between 9th  
19 and 10th on Main Street, there's a place called  
20 Padow's delicatessen. I'm not warranting any of the  
21 food, but I know there's a great place across the way  
22 called Gibson's. Sometimes it takes a little longer  
23 to eat. It depends on who is in there.

24                  There are probably some over in the Marriott,  
25 too, so we'll take an hour for lunch. Leave your pads

1 with Mr. Neal so you won't have to tote them around,  
2 and we'll take an hour for lunch. Thank you.

3 (The jury is out.)

4 THE COURT: The gentleman in the back, you  
5 haven't been here, but in this court when the jury  
6 goes out, we all remain seated. You obviously have  
7 been somewhere else.

8 AN UNIDENTIFIED SPEAKER: Unfortunately, I  
9 have.

10 THE COURT: There's a different protocol, and  
11 I just want to let you know so you don't have to get  
12 aerobic every day the jury comes in or out.

13 Is there anything else you-all need to take  
14 up over the break? What about this issue you were  
15 asking about?

16 MR. McDONALD: We're coming up with a plan.  
17 I talked to Mr. Robertson. We were going to see if we  
18 can agree amongst ourselves. Sometimes that happens.  
19 And if we have a dispute, we'll come back.

20 THE COURT: That's fine. I'm not talking  
21 about that. I'm talking about your questions about  
22 the RIMS. I told you I would give you a chance to  
23 explain to me further why the objection shouldn't be  
24 sustained. If you want to deal with that now, we can  
25 deal with it, or if you want to wait until tomorrow.

1           MR. McDONALD: I supposed we should handle it  
2 now.

3           THE COURT: Dr. Weaver, you can step out.

4           THE WITNESS: Thank you, Your Honor.

5           THE COURT: And go on and go to lunch.

6           I notice that somebody, whoever is down  
7 there, doesn't really enjoy potato chips or the  
8 cookies that are being delivered to you.

9           What's the issue now?

10          MR. McDONALD: I think the issue is this was  
11 related to the context of what one of ordinary skill  
12 would consider in getting an understanding of what the  
13 invention is.

14          THE COURT: Consider what?

15          MR. McDONALD: Would consider the disclosure  
16 in the patent of the components of the system that are  
17 described as the preferred embodiments of the  
18 invention.

19          THE COURT: As to whether there was an  
20 infringement?

21          MR. McDONALD: Sure, because that would  
22 relate to how to apply the Court's interpretations,  
23 how to apply the words that are giving their plain  
24 meaning that the Court didn't interpret as well. The  
25 context of the patent is very important to applying

1 the claims.

2 THE COURT: All right. The problem that I  
3 foresaw last time it came up is that there's this  
4 defined term "Fisher RIMS" that's used about the  
5 patent, and there's a term called "RIMS" that's used  
6 in the figures. And it doesn't use Fisher RIMS. So  
7 that's not a fair way to say Fisher RIMS in the text  
8 means the same thing as Fisher RIMS in the figures.

9 And then when the inventors said the RIMS in  
10 the figures were modified in a modified system, that  
11 provided a tremendous amount of confusion.

12 MR. McDONALD: Can we put up column 4 of the  
13 '682. Because what I wanted to show you, Your Honor,  
14 is when that figure 1A talks about the RIMS system and  
15 it's got that number 40, the patent is very clear that  
16 it is using the purchasing system 40 preferably, but  
17 not necessarily the Fisher RIMS system. It  
18 specifically refers to it in line 3.

19 Then if you go down to about line 8, it again  
20 refers to that number 40 as Fisher RIMS 40. If you go  
21 down a little further, the next paragraph goes into a  
22 little more detail.

23 THE COURT: The next paragraph says Fisher  
24 RIMS 40 also includes several Fisher RIMS databases.

25 MR. McDONALD: Exactly.

1                   THE COURT: What's the point here? Tell me  
2 where you're going. What question are you going to  
3 base on this?

4                   MR. McDONALD: The Fisher RIMS system had a  
5 different database. So it is not called a catalog in  
6 that figure 1A. It's called an inventory database.  
7 And it's a parts master, which the inventor said is  
8 the same thing as an item master.

9                   There's where I'm going to, but there's this  
10 apples and oranges going on that one of ordinary skill  
11 in the art would read. I think that the inventor's  
12 testimony about the changes is totally irrelevant.

13                  Talk about confusion, there's nothing in  
14 these patents about changes to work flow and things  
15 like that. There is no record made that those things  
16 were even done before the patent was filed. The RIMS  
17 patent, I'm talking about, or before this patent.

18                  There is no tie into those development  
19 efforts. They're talking about commercial embodiments  
20 and it's just not relevant.

21                  THE COURT: I don't understand how Fisher  
22 RIMS has anything to do with this case because we're  
23 not dealing with Fisher RIMS. It's talks about  
24 preferably but not necessarily, and this isn't Fisher  
25 RIMS.

1           They use the notions of Fisher RIMS, but it  
2 isn't the same thing. If it was, then what you're  
3 really talking about is not infringement, but  
4 invalidity.

5           MR. McDONALD: If it says this box shows you  
6 the old Fisher RIMS system with something called a  
7 parts master database for inventory on the one hand  
8 and now we're adding something new to it called the  
9 catalog database on the other hand, my logic here is  
10 simply that that old thing isn't a catalog database  
11 because if it was, why would you be adding a catalog  
12 database to it.

13           Fisher RIMS system, by the way, as described  
14 is from the patent, the '898 patent, that this patent,  
15 the patents-in-suit say was incorporated by reference,  
16 was actually part of the specifications disclosure of  
17 the patents involved in this suite.

18           THE COURT: They disclose it, yes.

19           MR. McDONALD: It's incorporated by reference  
20 if we go back to column 1.

21           THE COURT: As one of the embodiments.

22           MR. McDONALD: No, not just as one of the  
23 embodiments. They actually incorporated it by  
24 reference.

25           THE COURT: I think I went through this

1 before, I believe. I've been through this whole drill  
2 once before.

3 MR. McDONALD: But that's the bottom line is  
4 I want to show this thing over here is called a  
5 catalog database. The thing over there is an  
6 inventory database. That's a parts manager. That's  
7 two different things.

8 THE COURT: All right. Anything else?

9 I think the ruling I made is correct. I'm  
10 going to continue with that. If you want to bring him  
11 back for invalidity, you can, because it certainly has  
12 something to do with invalidity.

13 All right.

14 (Lunch recess.)

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